

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION**

Peak North Dakota, LLC, a Colorado
limited liability company; Peak Energy
Resources, LLC, a Delaware limited
liability company; Jack Vaughn; Alex
McLean; and Matt Gray,

Plaintiffs,

vs.

Wilbur Wilkinson; Standing Bear Traders,
LLC, a North Dakota limited liability
company; and Three Affiliated Tribes,
Fort Berthold District Court,

Defendants.

**ORDER FINDING AS MOOT
THE MOTION TO INTERVENE**

Case No. 4:08-cv-087

Before the Court is an “Amended Notice of Attorney’s Lien and Amended Motion to Intervene” filed by attorneys James Francis and John Mahoney on August 21, 2009. See Docket No. 54. James Francis and John Mahoney are attorneys who represented defendant Wilbur Wilkinson in a Texas state action against defendant Standing Bear Traders, LLC and third-party defendants Margarita Burciaga-Taylor and Richard L. Howell. The Texas dispute regarded a September 24, 2007 settlement agreement that Standing Bear Traders entered into with plaintiff Peak North Dakota, LLC for the pursuit of oil and gas mineral development on the Fort Berthold Indian Reservation. The parties did not settle the Texas state action.

On October 14, 2008, Peak North Dakota brought an action in federal district court to resolve its obligations to Standing Bear Traders, Wilkinson, Taylor, and Howell. See Docket No. 1. Wilkinson retained attorney Ervin Lee to represent him in federal district court. Attorneys James Francis and John Mahoney are not attorneys of record for Wilkinson in this action. On May 6, 2009, a settlement conference was held in Bismarck, North Dakota. James Francis and John Mahoney contend that the

parties reached a settlement agreement on that date, that they have expended considerable time and financial resources on behalf of Wilkinson in pursuing his claim in Texas, and that the claims before this Court and in Texas regard Peak North Dakota's obligations to Standing Bear Traders, Wilkinson, Taylor, and Howell under the September 24, 2007 settlement agreement. Therefore, attorneys James Francis and John Mahoney seek to intervene and collect a portion of the cash proceeds and overriding royalty interests to be distributed to Wilkinson and his heirs in accordance with the contingency agreement that Wilkinson signed to be represented in the Texas state action.¹

A telephonic status conference was held by Magistrate Judge Charles S. Miller, Jr. on October 9, 2009, with all parties appearing. The parties have agreed that the action has not been settled. Accordingly, the Court **FINDS AS MOOT** James Francis's and John Mahoney's "Amended Notice of Attorney's Lien and Amended Motion to Intervene" (Docket No. 54).

IT IS SO ORDERED.

Dated this 21st day of October, 2009.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court

¹ On January 8, 2008, Wilkinson entered into a contingency agreement with attorney John Mahoney which provides,

For good and valuable consideration, Wilbur Wilkinson and John Mahoney agree that Wilbur will retain John in all matters relating to his pending dispute with Richard Howell and Margarita Burciaga-Taylor and possibly others relative to Wilbur's position and rights in Spotted Bear Traders, LLC of which both parties are familiar. John agrees to represent Wilbur in this matter in consideration for Wilbur assigning to John the lesser of ½ of one percent or ½ of Wilbur's final determined share of overriding royalties on all Peak leases as stated in the September 24, 2007 agreement between Peak North Dakota, LLC, and SBT, and 10% of any moneys collected from anyone relative to SBT and this dispute over and above Wilbur's regular monthly fees under that agreement.

See Docket No. 49-1. In June 2008, attorneys John Mahoney and James Francis entered into an agreement for James Francis to represent Wilkinson in the Texas state action. See Docket No. 49-1.